A

TREATISE

ON THE

Laws of ENGLAND, &c.

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A TREATISE ON THE Laws of ENGLAND; CONCERNING

Eſtates in Lands, Advowſons, or Hereditaments, of what Kind ſoever; adviſing Perſons intereſted therein, either as Purchaſers, Mortgagees, or otherwiſe, — as well as Conveyancers, what Methods are proper to be uſed in Relation to the Security of Titles to ſuch Eſtates:

With ſome Obſervations on the

LAWS of BANKRUPTCY.

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In the SAVOY:

Printed by *Henry Lintot*, Law-Printer to the King's moſt Excellent Majeſty; and Sold by T. WALLER in *Fleetſtreet*, and T. TRYE near *Grays-Inn Gate*, *Holborn*. MDCCLIV.

A

TREATISE

ON

Titles to Land Eſtates, &c.

IT hath been for a long Time a general and juſt Complaint, that, as the Laws of *England* are now circumſtanced, it is impoſſible, in many Inſtances, to guard againſt Frauds, uſed by Perſons who are willing to be diſhoneſt in ſelling or mortgaging their Eſtates in Lands and Hereditaments, through the Concealment, Suppreſſion and Forgery of Titles thereto; and even in ſome Caſes you cannot be ſecure in purchaſing or lending Money on ſuch Eſtates, if you have thoſe of fair Character to deal with, from the Secrecy of Tranſactions concerning them; for it may not always be in the Power of ſuch Perſons to diſcover every Deed, Contract, &c. Being relative thereto, which may alter or affect the Nature of the Eſtate you are treating about; on which Accounts the whole Fortunes of a great Number of Families have been loſt, and Purchaſers and Mortgagees, as well as others intereſted in theſe Eſtates by Settlement, Grant, Deviſe,

or otherwiſe, have been unjuſtly deprived of them, and almoſt endleſs Law Suits introduced.

One chief End of the Laws of a well regulated Government, is to ſecure as much as poſſible the Property of the People who live under them; for the induſtrious Merchant, when he has by long Labour and Pains, and after ſeveral Riſques, acquired a conſiderable Subſtance in Money, and indeed all other Perſons who have Money to lay out, muſt be greatly diſcouraged if they cannot diſpoſe of their Money in Lands with Security, and ſafely ſettle Proviſions thereout for the different Branches of their Families; the want of ſuch Security muſt of Neceſſity be a great Hindrance to the Circulation of theſe Eſtates, and Property in general; therefore any Defect in the Laws of a Country, of this extenſive Nature, ought, if it poſſibly can, to be remedied. It muſt be confeſſed that to have Laws provided for the Protection of Property even of the loweſt Kind, for the Preſervation of which our Laws are in moſt Caſes very well calculated, is undoubtedly of publick Utility; but that the minuteſt Concerns ſhould be well guarded by the Laws, and ſevere Puniſhments inflicted on Perſons infringing them, and at the ſame Time proper Regulations be wanted to preſerve and ſecure Titles to the

largeſt

largeſt Eſtates in Land, is a Deficiency which, as far as it reaſonably may be, ſhould be ſupplied.

That proper Security is not to be had in Purchaſes or Mortgages of ſuch Eſtates, as our Laws now are, is well known to the moſt able Conveyancers from their Experience, and too often ſadly felt by Purchaſers and Lenders of Money on Land Security, who have paid away or lent their Money on bad Titles; for though the Perſon employed by them to look into the Title of ſuch Eſtate, and draw or direct the proper Conveyances, and every Thing which may be thought neceſſary to compleat the Purchaſe or Mortgage, be thoroughly ſkilled in every Part of his Buſineſs, it is impoſſible for him to guard intirely againſt the Frauds of a Seller or Mortgagor, or be ever ſure that a Title is clear, whether any Fraud be uſed or no, as ſome Deed, Will, or other Inſtrument, *&c.* affecting the Eſtates contracted for may be undiſcovered, either through Deſign, or even ſometimes for want of ſuch Seller's or Mortgagor's knowing of ſuch Deed, *&c.* which may very commonly happen. How then is it poſſible for a Lawyer to judge what Incumbrances an Eſtate is ſubject to? How often it hath been mortgaged? What Things it ſtands

charged with or are granted out of it, without ſome Method can be found out of diſcovering the Deeds, &c. creating ſuch Incumbrances or Charges, which now may be and often are concealed? Indeed what Statutes ſuch Eſtate is liable to, and what Judgments, Executions, Recognizances, Decrees, Fines or Recoveries affect it, may be known by ſearching at proper Offices; but ſuppoſe a Settlement made prior, or even ſubſequent to a Marriage, on valuable Conſideration, ſhould be concealed, or a Will of a Father, or any other Anceſtor or Perſon ſhould be ſecreted, as ſuch Will may eaſily be, for Wills deviſing Lands are often not proved, and a Perſon claiming Right ſhould ſell, mortgage, or otherwiſe charge the Fee of an Eſtate comprized in ſuch Settlement or Will, which he might be well intitled to do if ſuch Settlement or Will had never been made, tho' under them if produced it might appear that ſuch Eſtate ſo ſold, mortgaged or charged, was conveyed or deviſed to other Perſons and Uſes, and that the Perſon ſelling, mortgaging or charging the ſame, was perhaps only a mere Tenant for Life, without any Power either by Recovery or otherwiſe to bar the Remainders limited on ſuch Eſtate, or perhaps that he had no Title at all. It may be anſwered, that in ſuch Caſe the

Perſon

Perſon ſelling, mortgaging, or charging ſuch Eſtate, is liable to make Satisfaction to the Purchaſer, Mortgagee, &c. by his Covenants: This I own is true; but what Satisfaction can ſuch Seller, &c. make, if he ſhould become Inſolvent, which may very often happen; perhaps in ſome Caſes where ſuch Sellers, &c. uſe wilful Frauds in the Diſpoſition of their Eſtates, they may be puniſhable for ſuch Frauds; but whether they are or no, it is but a poor Compenſation to a Buyer, &c. who is to loſe a large Sum of Money: Indeed if Puniſhments for ſuch Frauds were more frequent and ſevere, it might prevent ſome Injuries to Purchaſers, &c. But if they were to be inflicted in every Inſtance of ſuch wilful Frauds, yet the Inconveniencies I have mentioned would often happen; for the Loſs is the ſame to a Purchaſer, &c. whether it ariſes from a Deed or Inſtrument being fraudulently concealed, or from its remaining undiſcovered on account of the Seller's or Mortgagor's not knowing that ſuch Deed or Inſtrument was ever executed or in Being: And in a Multitude of Caſes, not only Purchaſers and Mortgagees, but others intitled under real Settlements made on valuable Conſideration, Wills, &c. may be Loſers by Reaſon of Concealments, Suppreſſions, and Forgeries of Deeds, &c. concerning

cerning the Eſtates I have mentioned: It true that ſuch Suppreſſions and Forger ſubject Perſons guilty thereof to Puniſh ments, as I ſhall hereafter more partic larly mention; tho' ſuch Puniſhments c be but little Satisfaction, and too often n Security againſt ſuch Injuries to Purchaſer Mortgagees, and others intitled to Eſtat in Manner abovementioned.

In ſuch Caſes therefore a Title may b quite clear in Point of Law and Equity as it appears to a Conveyancer from ſuc Deeds, Records and Writings, as are pro duced to him; yet by Reaſon of ſometh concealed, it may be in Reality bad; an then, tho' the Eſtate contracted for be con veyed by every proper Deed or Inſtru ment; and for further Aſſurance, Fines ar levied, Recoveries ſuffered, Statutes entere into, and every cautious Method taken yet all may be to no manner of Purpoſe if ſuch Seller, &c. become Inſolvent, whic may very poſſibly happen: How neceſſar then is it that by ſome proper Means a the Deeds, Wills, Judgments, &c. affect ing Eſtates in Lands, ſhould be diſcoverable to a Purchaſer, &c.? For Fines levied by Tenants in Tail, though they preſently Bar the Iſſue in Tail, and Parties and Privies to ſuch Fines, yet Perſons intitled in Re mainder, not Parties thereto, and Strangers

to

ſuch Fines, are not concluded, if they
ſue their Claim by Entry or Action
thin five Years after ſuch Fines levied
ith Proclamations; or if their Rights ac-
ue, after ſuch Fines ingroſſed; within
e Years after ſuch Right accrued, and
favour of Infants, Women Covert, other
an Parties, Perſons out of the Land, in
iſon or of unſound Mind, they are not
be concluded, if they take their Actions
Entries within five Years after their re-
ſtive Impediments are removed. *See*
H. 7. *cap.* 24. *and* 32 *H.* 8. *cap.* 36.
either Fines, Recoveries, nor any Deed
Inſtrument, can deſtroy any prior *bona*
fide Mortgage or Incumbrance: Neither
nes, Recoveries, nor any Deed executed
mere Tenants for Life can bar the Re-
inders limited on an Eſtate after the
eath of Tenants for Life; but ſuch Te-
nts for Life by levying a Fine, or ſuffer-
g a Recovery of a larger Eſtate than for
eir own Lives, forfeit their Eſtates: Nei-
er do Recoveries ſuffered by Tenants in
ail, nor can any Deed deſtroy any Eſtate
Remainder by way of executory Deviſe Cro. Jac.
ithout the Aſſent of the Perſons intitled 192.
ereto: Neither does a feigned Recovery Wood's Inſt. 251.
ffered againſt Tenants in Tail, of any
ands given by the Crown, whereof the
Reverſion or Remainder at the Time of
ſuch

ſuch Recovery had ſhall be in the King bind the Heirs in Tail, whether any Vouche be had in ſuch Recovery or not: But tha after the Death of ſuch Tenants in Tail the Heirs in Tail may enter and enjoy th Lands according to the form of the Gift the Recovery or any thing done or ſuffer ed by or againſt ſuch Tenant in Tail not withſtanding; except that ſuch Tenants i Tail may make Leaſes by Writing indente for twenty-one Years or three Lives, re ſerving the accuſtomable Rent. 34 & 3 *H.* 8. *cap.* 20. Neither doth a Fine levie by any Perſon of any Lands before th levying of the ſame Fine given to th Perſons ſo levying the ſame, or their An ceſtors in Tail by Letters Patent or Act o Parliament, the Reverſion whereof at the Time of the Fines levied being in the King his Heirs or Succeſſors, bind the Heirs in Tail. 32 *H.* 8. *cap.* 36. Nor can any Deed or Conveyance executed in ſuch Caſes by ſuch Tenants in Tail bind the Heirs in Tail: Neither can a Remainder in Tail limited on a Leaſehold Eſtate for any Term of Years, for ſuch Terms may be intailed, as hath been frequently determined, be deſtroyed by Fine or Recovery; for a Fine cannot be levied of ſuch Leaſehold Intereſts ſo as to conclude Strangers; for in Order to do that, a Freehold muſt be in the Cognizor

Wood's Inſt. 242. 5 Rep. 124.

Wood's Inſt.

nizor or Cognizee; but it may be good between the Parties by way of Eſtoppel: A Fine may be levied by Tenant in Fee-ſimple, &c. for Years, or a Leaſe for Years be made by it; but the Leſſee for Years cannot levy a Fine of his Leaſe; nor can a Recovery be ſuffered without an actual Tenant of the Freehold; ſo that it is impoſſible by Fine, Recovery or any Conveyance, without the Conſent of the Perſons intitled to ſuch Remainder, or a Freehold in the Eſtate, to bar or deſtroy it.

Where then can be the Security of a Purchaſer or Mortgagee, when a Settlement, Will, &c. may be concealed, or unknown at the Time of the Sale or Mortgage, ſo that a conſiderable Time after ſuch Purchaſe or Mortgage has been made, it may appear, That the Seller or Mortgagor could not by any Means either of Fine, Recovery, Feoffment, or otherwiſe howſoever, in the Inſtances abovementioned, deſtroy the Remainder limited on the Eſtate ſold or mortgaged, or the prior Incumbrances thereon, or make a clear Title thereto? Or as ſuch Settlement, Will, &c. may be ſuppreſſed or forged, as well as concealed, How can not only Purchaſers and Mortgagees, but others intitled under ſuch Settlement, Will, &c. be ever ſecure of their Right, without a publick Method of diſcovering what

Deeds, &c. have been made concerning ſuch Eſtates.

What I would recommend as a Method which appears to me reaſonable, to remedy in ſome degree the Injuries which Purchaſers, Mortgagees and others who are intitled to Eſtates under any Settlement, Will, &c. often ſuffer through Concealments, Suppreſſions, and Forgery of Settlements, and other Deeds, Wills, &c. is in ſome reſpects different from any thing I have yet ſeen propoſed on this Subject: It is not exactly of the ſame Nature with the Regiſters kept in the Counties of *York* and *Middleſex*; for ſome Objections have been made to having ſuch Regiſters in every County; and there may be ſome Reaſons againſt making ſo publick, what Incumbrances are charged on every one's Eſtate in Lands, &c. in the Manner thoſe Regiſters do, as in ſome Caſes it may injure the Credit of ſome particular Perſons, or produce ſome other Inconvenience to them: Yet in thoſe two populous Counties ſuch Regiſtary was thought abſolutely Neceſſary for ſecuring the Rights of Perſons to theſe Eſtates under any Deed, Will, &c. which might be ſo forged, concealed or ſuppreſſed, and that Money might be laid out on Lands ſecurely; and daily Experience ſhews the great Uſefulneſs of them. Perſons in thoſe

Counties

Counties are ſecure in their Eſtates, and diſpoſe of their Money therein, without Danger of Loſing it, or being involved in long and expenſive Controverſies, if the Conveyancer they employ thoroughly underſtands what is a good Title; and a Purchaſer or Mortgagee of Lands in ſuch Counties, not employing a Lawyer of Eminence in his Profeſſion, can blame no one but himſelf if he ſhould ſuffer any Loſs: And ſuch Eſtates in thoſe two Counties, on account of the Security ariſing from Regiſtring all Deeds, Judgments, &c. affecting them, are certainly worth ſome Years more Purchaſe than in any other County; for in no other County, as the Law now ſtands, for want of ſuch Regiſter, or ſomething of that Kind, can any tolerable Security or Safety be had: If therefore any Scheme can be propoſed which will have all the Advantages of the Regiſter in thoſe two Counties, and at the ſame Time be free from the Objections made to ſuch Regiſter, it would be of great Service to all Perſons concerned in buying or lending Money on Eſtates in Lands and Hereditaments, and all Profits thereout, and others Grantees, Deviſees, &c. of ſuch Eſtates in other Counties. What my Thoughts are on this Head, I have offered at the End of this little Treatiſe, in a ſhort Sketch of an Act which I

would with great Submiſſion recommend; and which will come more properly after the Obſervations I ſhall make on thoſe Parts of our Laws relating to fair Purchaſers, Mortgagees of the Eſtates I have mentioned, and others, than if inſerted here.

The Court of *Chancery*, in which to the great Happineſs of the Kingdom at preſent preſides a Lord Chancellor of the greateſt Integrity, as well as Ability, does in every Inſtance give all poſſible Relief to fair Purchaſers and Mortgagees, who have Purchaſed or lent their Money on Eſtates without Notice of prior Charges or Incumbrances; but if in all Caſes Sales and Mortgages were to be confirmed, if fairly made on valuable Conſideration, and without Notice (tho' there is ſome Nicety in knowing what amounts to a Notice or not) an Injury muſt be done to ſome one; for if ſuch Purchaſes and Mortgages are at all Events to be made good, Perſons intitled to ſuch Eſtates in Remainder, who are often Purchaſers on valuable Conſideration, and thoſe to whom prior *bona fide* Incumbrances have been made, muſt ſuffer; and if ſuch Sales and Mortgages cannot be confirmed, as in ſome Caſes they cannot poſſibly be, the ſubſequent fair Purchaſer or Mortgagee muſt be a Loſer, on a Suppoſition of what is too often Fact, the Vendor or Mortgagor's Inſolvency.

See 2 Ven. 337.
1 Chan. Ca. 20, 36, 149, 162, 166.
1 Vern. 187.
2 Vern. 157.

Relief

Relief is likewiſe often given in the Court of Chancery againſt prior Incumbrances, when ſubſequent Purchaſers or Mortgagees have paid or lent their Money without Notice of them, if ſuch Purchaſers or Mortgagees have an Opportunity of buying in or taking an Aſſignment of even a ſatisfied Incumbrance, if prior in Point of Time to that under which any other Mortgagee claims; and this is undoubtedly, as the Law now ſtands, the moſt equitable way of determining in ſuch Caſes; but ſtill adequate Juſtice cannot be done to all Parties concerned, for ſome body muſt ſuffer in Caſe of the Inſolvency of ſuch Seller or Mortgagor.

See the Caſes referred to in the above Section.

There is alſo a Statute in 4 & 5 *W. & M. cap.* 16. which enacts, "That if any Perſon for any valuable Conſideration ſhall "acknowledge Judgment, Statute or Recognizance, and afterwards mortgage his "Lands to a ſecond Creditor, or in Truſt "for him, and ſhall not give Notice of "the ſaid Judgment, *&c.* under his Hand "before the Execution of the Mortgage, "unleſs ſuch Mortgagor, upon Notice "given by the Mortgagee under his Hand "and Seal, atteſted by two Witneſſes, of "ſuch former Judgment, *&c.* ſhall within "ſix Months pay off, and cauſe the ſame "to be vacated by Record; the Mortga-

"gor

" got ſhall have no Remedy in Equity or
" elſewhere for Redemption of the Lands
" againſt the Mortgagee." And it alſo
enacts, " That if any Perſon who ſhall
" mortgage Lands for Security of Money
" due, or for other valuable Conſidera-
" tion, and ſhall again mortgage the ſame
" Lands to any other Perſon for valuable
" Conſideration, (the former Mortgage
" being in Force) and ſhall not diſcover
" to the ſecond Mortgagee the former
" Mortgage under his Hand, the Mort-
" gagor ſhall have no Equity of Redemp-
" tion againſt the ſecond Mortgagee; and
" that if there be more than one Mort-
" gage at the ſame Time of the ſame
" Lands, the late or under Mortgagee
" ſhall have Power to redeem any former
" Mortgages; but nothing in this Act is
" to bar any Widow of a Mortgagor of
" her Dower, not legally joining with her
" Huſband in ſuch Mortgage, or otherwiſe
" lawfully barring herſelf from Dower."
This Act is certainly much in Favour of
ſecond and other ſubſequent Mortgagees,
but in ſeveral Caſes may be far from ma-
king them a proper Satisfaction, becauſe
the Equity of Redemption to be forfeited
may fall very ſhort of what a ſubſequent
Mortgagee advanced when the Principal
and Intereſt due to the firſt Mortgagee is

paid

paid off: And Frauds of this Kind are ſo commonly uſed by Mortgagors in diſtreſſed Circumſtances, that Eſtates have been and often are mortgaged for ten Times as much as they are worth; and this every one who is much concerned about Mortgages often meets with; ſo that not only one, but ſeveral Mortgagees, may loſe large Sums of Money if the Mortgagor ſhould be inſolvent.

There are in Favour of fair Purchaſers and Creditors ſeveral other Statutes. In 13 *Eliz. cap.* 5. it is enacted, "That all "Conveyances of Lands, or Goods, or "Profits out of the ſame, and every Bond, "Judgment and Execution to be had to "the Intent to defraud Creditors or others, "ſhall be only as againſt that Perſon "whoſe Actions, &c. by ſuch fraudulent "Practices might be delayed or defrauded, "of none Effect; and all Parties to ſuch "fraudulent Conveyances, Judgments, &c. "and Perſons privy to and knowing the "ſame, and wittingly avowing them to "be true, and thoſe who alien or aſſign "the Lands, Goods, &c. ſo to them con-"veyed, are hereby puniſhable by Forfei-"ture and Impriſonment." And in this Act are Proviſoes, "That common Reco-"veries ſhall be of like Force as if this "Act had not been made; and that this

" Act ſhould not make void any Eſtate by " reaſon whereof any Perſon ſhall uſe any " Voucher in any Writ of Formedon, nor " extend to any Eſtate or Intereſt in any " Lands or Goods made upon good Con- " ſideration, and *bona fide*, to any Per- " ſons not having Notice of ſuch Fraud." This Law was made perpetual by 29 *Eliz. cap.* 5. The Statute of 27 *Eliz. cap.* 4. enacts, " That all Conveyances, *&c.* of " any Lands or Hereditaments, or any " Eſtate or Intereſt thereout, with Intent " to defraud Perſons who have purchaſed, " or ſhall purchaſe the ſame, ſhall be deem- " ed (only as againſt that Perſon and others " claiming under him who ſhall purchaſe " the ſame for good Conſideration) to be " utterly void, and all Parties to ſuch " Conveyances, or Perſons privy and " knowing of the ſame, and wittingly " avowing the ſame to be true, to the " Diſturbance of Purchaſers or Leſſees, are " hereby puniſhable by Forfeiture and Im- " priſonment. But this Act is not to de- " feat any Conveyance made for good " Conſideration, and *bona fide*;" and it enacts, " That if any Perſon ſhall make " a Conveyance or Limitation of any " Lands, with any Clauſe of Revocation " at his Pleaſure, and after ſuch Convey- " ance ſhall ſell, convey or charge the

" ſame

" ſame Lands for Money or other good " Conſideration, the ſaid firſt Conveyance " againſt the ſaid Vendees ſhall be void; " but no lawful Mortgage made *bona fide* " on good Conſideration ſhall be hereby " impeached." The Remainder of this Act relates to the Entry of Statutes Merchant and of the Staple, ſo as to make them binding on ſubſequent Purchaſers. This Act was made perpetual by 39 *Eliz. cap.* 18.

The Statutes laſt-mentioned, ſo far as they extend, are excellent Laws; but every Lawyer muſt know that the Inconveniencies and Injuries I have ſtated, happen in Caſes where Conveyances are made without the leaſt Fraud: As for Inſtance, in the above Caſe of Settlements before or after Marriage on good and valuable Conſiderations, limiting only to the Perſon ſelling or mortgaging an Eſtate for Life (who perhaps may be Heir at Law, or otherwiſe well intitled to the Fee, if no ſuch Settlement had been made, though under it, as I above obſerved, he may be only Tenant for Life, or indeed have no Eſtate at all) Remainder to Truſtees to preſerve contingent Remainders; which Settlement may be concealed from a Purchaſer; and often in the Caſe of Wills, an Heir at Law may be only Tenant for Life of an Eſtate under

a Will not ſhewn to the Purchaſer, and another Perſon intitled to the Remainder or Reverſion, and the Heir may (ſuch Will being concealed) Sell or Mortgage the Fee-ſimple of ſuch Eſtate, and become Inſolvent; and when the Right of the Perſon intitled in Remainder or Reverſion accrues, how is the Purchaſer, *&c.* to avail himſelf? To ſuch Settlements and Wills theſe Statutes do not extend; neither do they to defeat prior *bona fide* Incumbrances; and there are many other Caſes of the ſame Nature, in which the Injuries I have mentioned may happen which theſe Acts do not reach. If Mortgagors and Sellers of ſuch Eſtates, who ſhould wilfully Sell the ſame, or make any ſubſequent Incumbrance thereon, without diſcovering to the ſubſequent Purchaſer or Mortgagee all prior Charges and Incumbrances, if any ſuch there ſhould be, on the Eſtates by them Sold or Mortgaged, were to be ſubject to the Puniſhments inflicted by theſe Acts, as they are in every reſpect Guilty of as great Frauds as what are intended to be remedied by them, it might prevent ſome Injuries to fair Purchaſers and Mortgagees, but would not in every Caſe; for ſome Deeds may remain ſecret without any Fraud; and it may not be in the Power of a Seller or Mortgagor to diſcover them; which Deeds may alter

the

the Nature of the Eſtate contracted for, and be productive of the ſame Inconvenience as if they were fraudulently concealed. It is therefore abſolutely Neceſſary that by ſome proper Means all Deeds, *&c.* binding ſuch Eſtates ſhould be diſcoverable.

There is a Statute in 3 *W. & M. c.* 14. againſt fraudulent Deviſes, which Enacts, "That where Perſons having Power to "deviſe, diſpoſe of, or make Appointments "of Lands and Tenements, or any Profit "thereout, ſhall diſpoſe of the ſame by "their Wills, ſuch Wills, Diſpoſitions or "Appointments, ſhall be deemed (only as "againſt Creditors by Bond, or Specialty "binding the Heir) to be fraudulent and "void; and ſuch Creditors are to ſue the "Heir and Deviſees jointly; and ſuch De-"viſees ſhall be liable in the ſame Manner "for a falſe Plea, as any Heir ſhould have "been for not Confeſſing the Lands to "him deſcended: But where there ſhall "be any Limitation of Lands or Tene-"ments for Raiſing or Payment of juſt "Debts, or Portions for Children, other "than the Heir at Law, in purſuance of "any Marriage Contract or Agreement in "Writing made before Marriage, the ſame "ſhall be of force; and any Heir at Law "liable to pay his Anceſtor's Debt in re-"gard of any Lands or Tenements de-

" ſcended to him, who ſhall alien the ſame " before Action brought, ſuch Heir ſhall " be anſwerable for ſuch Debt, in an Ac- " tion of Debt to the Value of the Land " aliened: In which Caſe all Creditors " ſhall be preferred, as in Actions againſt " Executors; and ſuch Executions ſhall " be taken out upon any Judgment ob- " tained againſt ſuch Heir, to the Value of " the Land, as if the ſame were his own " Debt, ſaving that the Lands *bonâ fide* " aliened before Action brought ſhall not " be liable: And every Deviſee made liable " by this Act ſhall be chargeable in the " ſame Manner as the Heir at Law, not- " withſtanding the Lands deviſed ſhall be " aliened before Action brought." This Act is made perpetual by 6 *W.* 3. *cap.* 14. and is as to ſuch Bond and Specialty Creditors a very good one: But as it ſeems thereby, that when an Action is commenced againſt ſuch Heir or Deviſee, the Lands ſo deſcended or deviſed, which would have been liable in the Hands of the Heir to the Payment of ſuch Bond and Specialty Debts, cannot be aliened, it would therefore be proper that when ſuch Action is brought, Notice thereof ſhould be regiſtred in the County, where ſuch Lands ſo liable to ſuch Action as above, if they ſhall be known, are ſituated, at ſuch Office as I ſhall hereafter

after recommend, tho' perhaps it may now be known, by ſearching the Offices in which Writs iſſuing out of the Courts at *Weſtminſter* are entered, when ſuch Action is commenced, yet not always to a Certainty, without much Trouble and Expence: But of giving proper Notice of Actions which may affect Purchaſers and Mortgagees, I ſhall be the more particular hereafter; and alſo as to Caſes where it ſhall not be known at the Time of ſuch Actions being brought in what Counties the Lands to be affected by ſuch Actions lie.

The Statute made 29 *Car.* 2. *cap.* 3. is very uſeful ſo far as it reaches, which, in order to prevent Frauds in ſetting up private parol Agreements with Regard to Eſtates in Lands and Hereditaments, requires that all Grants, Agreements, *&c.* to affect Eſtates in Lands and Hereditaments not being Copyhold or Cuſtomary, ſhall be reduced into Writing, or otherwiſe they ſhall only have the Effect of Leaſes at Will; and all Wills of Lands are to be in Writing, and atteſted by three credible Witneſſes: But this Law does not go quite far enough, for though ſuch Grants, *&c.* are to be put in Writing, yet ſuch Writing often is and may be concealed or ſuppreſſed; therefore in order to prevent Frauds totally, ſuch Writing ſhould be in ſome Manner diſcoverable; for

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in many Caſes there is not much Difference between the Fraud of ſetting up an Agreement, Grant, Contract, &c. never made, or concealing or ſuppreſſing one that has been made.

Land Eſtates are now conveyed more privately by Leaſe and Releaſe than they formerly were when Feoffments were generally uſed, and Aſſignments and Grants in many Caſes were executed upon the Lands conveyed; and for this Reaſon more Frauds may be uſed in the Diſpoſition of theſe Eſtates; for by Livery and Seiſin, and ſuch publick Method of conveying them, every one knew in a great Meaſure their Owners, and how they were from Time to Time diſpoſed of.

In Purchaſes made on valuable Conſideration by Bargain and Sale, ſuch Bargain and Sale I know is to be inrolled, by the Statute of Inrolments, 27 *H.* 8. *cap.* 16. 34 & 35 *H.* 8. *cap.* 22. and 5 *Eliz. cap.* 26. But then there are various Courts wherein they may be inrolled; and ſuch a Bargain and Sale cannot be made to the Uſe of any one but the Bargainee, for it is always made on valuable Conſideration, and muſt be to the Uſe of the Perſon paying ſuch valuable Conſideration. Covenants to ſtand ſeiſed to Uſes in Conſideration of natural Affection, Marriage, &c.

need

need not be inrolled; neither are Terms for Years to be inrolled; for theſe Statutes extend to Bargains and Sales of Freehold and Inheritance only, and not to Terms for Years, &c. ſo that if this Conveyance was to be always uſed inſtead of a Leaſe and Releaſe, or Feoffment, in ſuch Purchaſes in which it might properly be uſed, though it often is not, yet it would not anſwer the End effectually; it might indeed be of great Service, if all Settlements, Covenants to ſtand ſeiſed to Uſes, Deeds, Judgments, &c. of all Kinds concerning Eſtates in Lands, except Mortgages, for the Reaſons hereafter mentioned, were to be inrolled in one certain Court; and if Wills affecting Lands were likewiſe there to be inrolled in a limited Time after the Death of the Teſtator; but ſuch particular Office for that End, as I ſhall hereafter propoſe to be kept in a particular Part of each County, by proper Perſons, to be always reſorted to, in which Regiſtries ſhould be made of ſuch Deeds, &c. would be much more convenient and uſeful.

The Court of Equity, in Concurrence with the Laws above cited, (which I have here ſhortly mentioned together, in order to ſhew how far Frauds in the Diſpoſition of Eſtates are at preſent, though they are not ſufficiently guarded againſt) does always,

ways, as far as it poſſibly can, relieve againſt Frauds to the Detriment of fair Purchaſers, Mortgagees and others; but it is impoſſible always to prevent them in ſuch a Manner as the Laws now are. Purchaſers and Mortgagees often run great Riſques in dealing about Eſtates in Land with Perſons in Trade liable to Commiſſions of Bankruptcy, who before they ſell or mortgage may perhaps have committed a ſecret Act of Bankruptcy; and the Commiſſioners or Aſſignees, or ſome of them, thereby become intitled from the Time of ſuch Act committed, to the purchaſed or mortgaged Eſtate, in Truſt for the Creditors before the Bankruptcy, and do ouſt ſuch Purchaſers, *&c.* who are only to ſtand as common Creditors, and to take with the other Creditors *pro ratâ*, according to the Money by them advanced; and perhaps in Strictneſs they may not be intitled to a Dividend of the Bankrupt's Eſtate with ſuch Creditors, as they are in Fact Creditors after the Bankruptcy, which has Relation to, and commences from the Act committed; but admitting they are intitled thereto, they muſt be ſtill very great Sufferers.

It is highly reaſonable that the Eſtate ſold or mortgaged by ſuch Bankrupt ſhould be divided amongſt his Creditors; but I think

think far from being ſo, that Money paid to him for or lent him on the Security of ſuch Eſtate by Perſons not having the leaſt Notice of his having committed any Act of Bankruptcy, (he carrying on Buſineſs in his uſual Courſe, and being to all Appearance ſolvent) or the Produce of ſuch Money, ſhould be likewiſe ſhared by them. I know how diſagreeable it may be to ſome, even to attempt to give any Reaſons why one Perſon, though his Caſe may have every favourable Circumſtance attending it, ſhould be more indulged, or better ſecured in Caſes of Bankruptcy, than another, as ſuch Bankruptcy is a kind of a general Loſs, in which they will ſay all Perſons who have had any Dealings with the Bankrupt ſhould be equally involved; yet I cannot help thinking it unreaſonable that ſuch fair Purchaſers and Mortgagees, as I have mentioned, ſhould be deprived of the Eſtates in Lands and Hereditaments they contracted for, without a Return of the Conſideration Money by them fairly advanced: And indeed it often may be a Temptation to Perſons liable to Commiſſions of Bankruptcy to defraud ſuch fair Purchaſers, *&c.* by committing ſuch ſecret Acts of Bankruptcy, and after ſuch Act committed, ſelling or mortgaging their Eſtates in Lands, *&c.* if the Eſtate ſold

or mortgaged by them, as well as the Conſideration Money received, is to be divided amongſt the Creditors; for as it advances ſuch Bankrupts Eſtate, ſo is it a conſiderable Advantage to themſelves, who are to have ſo much *per Cent.* according to the Amount and Value of the Eſtate they ſhall diſcover; and that Purchaſers and Mortgagees ſhould be liable to ſuch Loſſes in the Caſes I have mentioned, and Perſons in Trade have it in their Power thus to defraud, is certainly a Doctrine which wants Amendment.

By 21 *Jac.* 1. *cap.* 19. No Purchaſers for good Conſideration are to be impeached, unleſs a Commiſſion of Bankruptcy be ſued forth againſt the Vendor within five Years after he ſhall become Bankrupt. This is far from rendring theſe Purchaſes ſatisfactory; And who would lay out any conſiderable Sum of Money with Perſons liable to be Bankrupts, without being properly indemnified till five Years were elapſed, as it muſt be intirely uncertain how long or ſhort a Time before ſuch Purchaſe made an Act of Bankruptcy had been committed; and how difficult in ſome Caſes, nay, how impoſſible it is to get ſuch proper Indemnity, every one muſt be able to judge?

Some

Some Objections may perhaps be made to what I would in this reſpect Propoſe; (*viz.* That Purchaſes and Mortgages made on good Conſideration, without Notice of a ſecret or any Act of Bankruptcy done, ſhould be valid) as that it may be the Foundation of a Scene of Fraud, by giving ſuch Tradeſmen an Opportunity before Commiſſions are taken out againſt them after private Acts of Bankruptcy committed, to ſell or mortgage their Eſtates in Land, and go away with the Money ariſing from ſuch Sale or Mortgage, and leave nothing for the Creditors. But by the 5 *Geo.* 2. *cap.* 30. if they do not Surrender themſelves in due time to be examined, and diſcover their Effects, and deliver the ſame to the Commiſſioners; or if they Imbezzil the ſame to the Value of Twenty Pounds; they are on Conviction to be deemed guilty of Felony, without Benefit of Clergy; and ſuch Felon's Goods and Eſtate are to go among the Creditors ſeeking Relief under the Commiſſion: Or it may perhaps be objected, that they will fraudently Convey to Perſons ſecretly for their own Uſe; and ſo they may now, by dating the Conveyances before the Bankruptcy, if they have a Mind to defraud their Creditors; but they are puniſhable for ſuch Fraud by the ſaid Statute of 5 *Geo.* 2. And by the ſame

Statute, Perſons accepting ſuch Truſts, and wilfully concealing the Eſtate of the Bankrupt, and not within forty Days after the Commiſſion iſſues, and Notice given in the Gazette, diſcovering ſuch Truſt Eſtate in Writing to one of the Commiſſioners or Aſſignees, and ſubmitting to be examined, if required, are to forfeit One hundred Pounds, and double the Value of the Eſtate concealed, to the Creditors. The Injuries ariſing from Frauds by Bankrupts are therefore much more likely to happen to a Purchaſer or Mortgagee than to other Perſons Creditors of Bankrupts; for an Act of Bankruptcy may be deſignedly concealed, which the Bankrupt as well as his Creditors may receive ſome Benefit from, if the fair Purchaſer's or Mortgagee's Money, and alſo the Brankrupt's Eſtate, ſold or mortgaged to them, are to be divided among them, as before limited: For the Laws have already ſufficiently guarded in moſt other Caſes againſt Frauds, which can be committed by Bankrupts, by inflicting very ſevere Puniſhments, as abovementioned, on ſuch who do not Surrender themſelves, and deliver up their Eſtates and Effects, or who ſhall conceal them, or uſe any kind of Fraud; and alſo on Perſons accepting fraudulent Truſts, and wilfully making Concealments.

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In the Caſe of common Creditors, by the ame Statute of 5 *Geo.* 2. where there hath een mutual Credit given, and mutual Debts between the Bankrupt and any other Perſons, the Commiſſioners or Aſſignees re to ſtate the Account, and one Debt may be ſet againſt another, and the Balance of ſuch Account ſhall be claimed or paid. By a Statute made 19 *Geo.* 2. *c.* 33. reciting, " That many Perſons within the " Deſcription of, and liable to the Statutes " concerning Bankrupts, frequently commit ſecret Acts of Bankruptcy unknown " to their Creditors and other Perſons " with whom they have Dealings, and " after Committing thereof continue to " appear Publickly, and carry on Buſineſs " by buying and ſelling of Goods, drawing, accepting and negotiating Bills of Exchange, and paying and receiving Money " on Account thereof in the uſual Way of " Trade, and in the ſame open Manner as " if they were Solvent, and not become " Bankrupts; and that permitting ſuch " ſecret Acts of Bankruptcy to defeat Payments really made in ſuch Caſes and " Circumſtances, where the Perſons receiving the ſame had no Notice, nor were " privy to their having committed any " Act of Bankruptcy, will be a Diſcouragement to Trade, and a Prejudice to

" Credit

" Credit in General, It is Enacted, That
" after the 29th of *October* 1746. No real
" Creditor of a Bankrupt, in reſpect of
" Goods ſold, or Bills of Exchange really
" drawn or negotiated, or accepted by ſuch
" Bankrupt in courſe of Dealing, ſhall be
" liable to refund to the Aſſignees of the
" Bankrupt's Eſtate any Money, which
" before the ſuing forth of ſuch Commiſ-
" ſion was really in the Courſe of Trade
" received by him of ſuch Bankrupt, be-
" fore he had Knowledge or Notice of his
" becoming a Bankrupt, or being in inſol-
" vent Circumſtances." Now I can ſee
no good Reaſon why, even after a ſecret
Act of Bankruptcy committed, *bonâ fide*
Purchaſers and Mortgagees without Notice
thereof, who have paid their Money, which,
or the Produce thereof, is to be divided
amongſt Creditors under a Commiſſion,
ſhould not be allowed to retain the Eſtates
in Lands they paid a valuable Conſideration
for, to Perſons having committed ſuch
private Acts of Bankruptcy, or be repaid
the Money they actually and fairly advan-
ced; for the Caſe is in ſhort the ſame:
They have advanced a conſiderable Sum of
Money, and received for it Lands, which
does not in the Reaſon of Things differ
from what this Act was intended to reme-
dy, That a Perſon who has ſold Goods,

&c.

&c. and received the Money for them is not obliged to refund; for whether Goods are ſold for Money which when received may be retained, or whether Money be given for Lands, is within the ſame Reaſon; for it is no more than Exchanging one thing for another in both Caſes.

It is therefore requiſite that ſome Alteration ſhould be made in our Laws, for the better Security of Perſons dealing with Tradeſmen within the Deſcription of the Statutes concerning Bankrupts: For which Purpoſe it may be uſeful, and in a great Degree prevent Loſſes to Purchaſers and Mortgagees, if a fair Purchaſer, *&c.* on valuable Conſideration, and without Notice of any Act of Bankruptcy committed, or of the Vendor or Mortgagor's being in inſolvent Circumſtances, (of the Payment of which Conſideration Money, and want of Notice, ſufficient Proof ſhould be made, as in Heads of an Act hereto added is directed, or in ſuch other Manner as ſhould be approved of) ſhould be juſtified in retaining the Eſtates in Lands ſo fairly purchaſed, *&c.* if what ſhall have been fully proved to have been paid, and without Notice, ſhall not be repaid with Intereſt: And it would likewiſe be of Service to Creditors, as well as Purchaſers and Mortgagees, if Bankrupts ſelling or mortgaging ſuch

Eſtate,

Eſtate, after an Act of Bankruptcy wil
fully and knowingly committed, withou
diſcovering the ſame to a Purchaſer, &c
ſhould be ſeverely puniſhed by Impriſon-
ment or otherwiſe for ſuch Fraud; and
which he certainly ought to be as much
puniſhed for, as for Concealments, or any
thing elſe he can do with Intent to defraud
his Creditors: For, as the Law now ſtands,
the only Method a Purchaſer and Mortga-
gee can take to be ſafe in Tranſactions about
the Eſtates of Perſons liable to be Bank-
rupts, is to have a collateral Security from
ſome other Perſon till ſuch Purchaſe, &c.
is exempted from any Impeachment under
a Commiſſion of Bankruptcy, *viz.* for five
Years; though it may be very difficult to
get ſuch Security; and it would be almoſt
impoſſible to carry on Buſineſs, if this tho'
ſo reaſonable a Caution was always to be
uſed; other Lands cannot be ſecured by
the Seller or Mortgager; for they are like-
wiſe, from an Act of Bankruptcy commit-
ted, veſted in the Commiſſioners and Aſ-
ſignees, in Truſt for Creditors. Indeed
you may perhaps be ſafe, if you can agree
not to advance the Money for the Eſtate
you are contracting for, till the five Years
are expired, or that it ſhall be laid out in
the Funds, or depoſited in ſome other
Manner for ſuch time: But this can ſeldom

be done, for Tradeſmen generally want to uſe their Money immediately in Trade; it is therefore impoſſible now to be ſafe in ſuch Purchaſes and Mortgages from theſe Perſons, without requiring (what can hardly ever be complied with) a proper Indemnity, which muſt be a great Hindrance to them and Commerce in general; for they often really and properly want to raiſe Money on their Eſtates in Land by Sale, or otherwiſe, to enable them to carry on their Trade with Effect. Puniſhing of Bankrupts guilty of fraudulently ſelling, &c. ſuch their Eſtates, after an Act of Bankruptcy committed, without diſcovering the ſame to a Purchaſer, &c. would prevent many of the Injuries, Loſſes and Inconveniences I have mentioned, which Creditors, Purchaſers and Mortgagees are now ſo liable to.

Where a Perſon buys Eſtates in Lands, &c. of, or lends Money on ſuch Security to any Perſon who has committed a ſecret Act of Bankruptcy, and fairly pays his Money without Notice thereof, the Court of Equity will give him all the Indulgence and Aſſiſtance it can; but yet often it cannot relieve him, as it may not be in the Power of ſuch Purchaſer or Mortgagee by any legal or equitable Means to protect his Purchaſe or Mortgage: However ſtill, Cases Temp. Talbot 65 to 70.

while the Law is dubious in this Point, whether ſuch fair Purchaſer, &c. without Notice may be within the Statute of 21 *Jac.* I. above mentioned, or not; or whether he may in ſome Caſes, and not in others, it muſt be a great Diſſatisfaction to the Purchaſer, &c.

It may be aſked, what Security is to be had in Caſes of Leaſehold and Copyhold Eſtates againſt the Frauds I have mentioned? For they may be committed in the Diſpoſition of theſe Eſtates, as well as of thoſe of a greater Kind, from Concealments, Suppreſſions, or Forgeries of Deeds, &c. or prior Incumbrances. The Statutes appointing a Regiſter to be kept in the Counties of *York* and *Middleſex* do not extend to any Copyhold Eſtates, or to any Leaſes at a Rack Rent, or to any Leaſe not exceeding twenty-one Years, where the actual Poſſeſſion goeth with the Leaſe; though I can ſee no reaſonable Objection againſt purſuing the ſame Method and Rules as in greater Eſtates; and that it would not be by any Means improper, if every Leaſe granted for any Term exceeding three Years ſhould be regiſtred, and all Deeds, Aſſignments, Wills, Judgments, &c. concerning the ſame, except Mortgages thereof, in the Manner I ſhall hereafter propoſe; at leaſt, I think, with Re-

gard

gard to Leaſehold Eſtates, the ſame Method ſhould be purſued as in *Yorkſhire* and *Middleſex*, Mortgages, Aſſignments of ſuch Leaſes only excepted. What is done concerning Cuſtomary Eſtates in Manors may be generally known from the Court-Rolls, in which every Admittance, &c. ought to be inrolled. Indeed, the Buſineſs done at thoſe Manor Courts is for the moſt part ſo publickly managed in Relation to Surrenders and Admittances to Eſtates on Deaths, Sales, Mortgages, &c. that what is there done it is almoſt impoſſible to keep private. Of theſe Copyhold Eſtates I ſhall preſently take more particular Notice.

The Method in which I recommend regiſtring Deeds, &c. (for a full Account whereof I refer you to a ſhort Plan of an Act I would propoſe, and which I have hereto added) will not only be of great Service to prevent the Frauds before mentioned, as it will diſcover to a Conveyancer concerned for a Purchaſer or Mortgagee, and all other Perſons, what Deeds, &c. are in Being that may in any wiſe affect or bind the Eſtate to be purchaſed, &c. but will likewiſe be ſome Kind of Evidence to re-eſtabliſh ſuch Deeds, &c. if by any Misfortune of Fire, or otherwiſe, they ſhould be loſt or deſtroyed after they are ſo regiſtred; and it is ſo well known

what Intricacy and Expence often happen after ſuch Loſſes, to confirm Titles to Eſtates, that I ſhould imagine this Argument alone would be a ſufficient Inducement to make ſuch propoſed Alteration in our Laws.

As the Law now ſtands, in all Purchaſes and Mortgages of Eſtates of any conſiderable Value, on which Fines and Recoveries will operate, I would have, beſides the uſual Deeds of Leaſe and Releaſe, or Feoffment, or Bargain and Sale, *&c.* as the Caſe may require, a Fine levied, and Recovery ſuffered to me, or to my Uſe, of the Eſtate I purchaſed, or lent Money upon, (though ſuch Fine and Recovery muſt be attended with great Expence) for by ſuch Fine and Recovery the Iſſue of the Perſons levying and ſuffering the ſame, if they are Tenants in Tail, are immediately barred, except in ſome particular Grants from the Crown, as above mentioned. If the Perſons levying or ſuffering the ſame are Tenants in Tail, the Perſons intitled in Remainder are barred, except in Caſes of executory Deviſe, *&c.* as above; and by ſuch Fine and Recovery all Perſons intitled to any Eſtate in Remainder or Reverſion will at all Events be barred, if they ſhould not make their Claims within due Time after their Rights accrue, or

after

after any Impediments they are under when ſuch Rights accrue be removed, whether the Perſon levying and ſuffering the ſame was only Tenant for Life, Tenant in Tail, or even if he had no Right at all; though how ſoon or late ſuch Non-claim may happen, and the Title by ſuch Means become clear, muſt be utterly uncertain; for in many Caſes it cannot by any other Means, except a very long Poſſeſſion under the Statutes of Limitation. There are many Caſes, as I have above mentioned, where a Will or Settlement, or other Deed or Inſtrument, may be concealed, *&c.* in which neither a Fine or Recovery can be of any Force till after ſuch Non-claim; as where the Perſons levying or ſuffering the ſame may be mere Tenants for Life; and in that Caſe ſuch Tenants for Life by levying a Fine of a larger Eſtate than for their own Lives, or making Feoffments of ſuch larger Eſtates, and in ſeveral other Caſes, are liable to Forfeitures; but the Time of Non-claim does not run ſo as to bar thoſe intitled in Remainder till after the Death of Tenants for Life. As to Forfeitures of ſuch Tenants for Life, ſee more fully in *Wood's Inſt.* 314. But *vide Ca. in Eq. Abr.* 257. where a Mortgagee of an Eſtate forfeited by a Tenant for Life, by levying

levying a Fine to the Uſe of himſelf and his Heirs, to corroborate the Mortgage, notwithſtanding ſuch Forfeiture, was relieved againſt the Perſon intitled to enter for ſuch Forfeiture, and enjoyed the Lands mortgaged during the Life of ſuch Tenant for Life: Neither can a Fine or Recovery be of any Force till after ſuch Non-claim, where the Perſons levying or ſuffering the ſame are not intitled to any Eſtate at all in the Lands therein comprifed: And as to Tenants in Tail of Lands of the Gift of the Crown, Remainder in the Crown, a Fine or Recovery levied or ſuffered by Tenants in Tail do not bar the Iſſue in Tail; and I doubt whether a Fine with Proclamations levied of ſuch Eſtate by any Perſon whomſoever, even in Caſe of Non-claim, doth bar the Iſſue in Tail. And in ſome other Caſes where the Eſtate is not deveſted or put to a Right, the Title may not be clear even after ſuch Fine and Non-claim: But yet in ſeveral Caſes a Recovery may be of Uſe, in which a Fine will not, to bar Remainders in Tail, &c. and is the beſt Aſſurance a Purchaſer, &c. can now have next to an Act of Parliament; and in ſome Caſes a Fine will operate as in that of Non-claim, where a Recovery will not. It is neceſſary in all Purchaſes

haſes and Mortgages of great Conſequence
refully to ſearch in every proper Office,
o know what Fines and Recoveries, Judg-
ents, Decrees, Statutes, Recognizances
r Inſtruments whatſoever, which are now
iſcoverable at any Office, are in Being,
hich may affect the Eſtate to be contracted
or, and likewiſe diligently to enquire, as
uch as poſſibly you can, what Family
ettlements, or other Deeds or Wills, have
en made concerning ſuch Eſtate; and in
e Purchaſe Deed I would likewiſe have
e Covenant for Warranty inſerted, as
is a real Covenant, and binds Lands
eſcended to the Heir more ſtrongly than
ny other Covenant; and if the Perſon I
alt with was not in very good Circum-
ances, ſo that he might beyond doubt be
ought ſufficient to anſwer for a Breach of
ovenant, if that ſhould happen, I ſhould
quire a proper and ſufficient collateral Se-
urity, or that the Purchaſe Money ſhould
ſo diſpoſed of, as to remain a Security to
e for ſuch Purpoſe for ſome conſiderable
Time at leaſt; and I am ſure that not one
Perſon in a Thouſand will be willing or
able to give a Purchaſer, &c. ſuch ſuffi-
cient Indemnity: However in all Caſes the
beſt Security, which from the Nature of
the Caſe can be had, ought to be required
and taken: Indeed ſome Satisfaction may
be

be had from the Honeſty as well as reputed Ability of the Perſon you contract with. The Cautions I have mentioned are ſome of the beſt which can now be uſed, for protecting a Purchaſer's or Mortgagee's Title, next to having it eſtabliſhed by an Act of Parliament; and even that ſometimes may be too privately obtained, without the whole Title being laid before the Parliament, from the Concealment or Suppreſſion of ſome Deed, Will, *&c.* and under ſuch Circumſtances ought to be repealed; ſo a Decree in *Chancery* is not any certain Security; for all the Parties concerned or Deeds may not have been before the Court when ſuch Decree was made; therefore ſuch Decree in ſome Caſes ought to be reverſed. Yet theſe Rules, and all others that can at preſent be laid down, are far from making a Purchaſer or Mortgagee ſo ſecure as he ought to be; and all this Inſecurity and Inconvenience ariſes from the Want of a proper Method, by which a Purchaſer, *&c.* may know what Deeds, Wills, Judgments, *&c.* are in Being, concerning the Eſtates they are dealing about. In the Caſe of Copyhold Eſtates, it may be a good Rule to prevent your being impoſed on by private Surrenders out of Court to Cuſtomary Tenants according to the Cuſtom of moſt Manors, to be preſented at the next Court,

that the Purchaſe or Mortgage Money be ſomewhere depoſited or retained till the next Court after ſuch Purchaſe or Mortgage be made, which may indeed be ſometimes inconvenient; but as the Law now ſtands, if the Purchaſer, &c. would in any degree be ſafe, it cannot be avoided.

In Caſes of Mortgages and other Incumbrances, what is generally taken for Security is very uncertain: The firſt Mortgagee may perhaps have left in the Hands of the Mortgagor all or part of the Writings belonging to the mortgaged Eſtate; and this in ſome Caſes may ſeem neceſſary, as only part of the Lands therein compriſed are to be conveyed as a Security; and other Pretences may ſometimes be made by a Mortgagor for his retaining them: And this often deceives a ſecond, or other ſubſequent Purchaſer or Mortgagee; though I think it would be a good Rule never to lend Money on Land Security without the Cuſtody of all the Deeds relating thereto; and is I think what every Mortgagee, as the Law now is, ought to inſiſt upon: And a Mortgagee leaving them in a Mortgagor's Hands, if he ſhould make uſe of them to defraud any ſuch ſubſequent Purchaſer, &c. ought to loſe his Money rather than ſuch ſubſequent Purchaſer or Mortgagee. Of what uſe is the Mortgage-Deed, with all

the uſual Covenants contained therein, eve
if you have, as the general Cuſtom is,
Bond for performing ſuch Covenants? Th
following Directions, with what I hav
ſaid in the above Section, may perhaps b
of ſome Service to Lenders of Money an
Purchaſers (*viz.*) always to enquire into th
Integrity and Ability of the Perſon you ar
treating with; to have Fines and Recoveri
in Caſes where they will operate; and i
every Caſe where you are not ſatisfied tha
you are out of Danger, on Account of th
Circumſtances of the Mortgagor, *&c.*
he ſhould fail in his Covenants, to hav
ſome other collateral Security from ſuc
Mortgagor, *&c.* or from ſome other ſub
ſtantial Perſon in manner above recom
mended; never to lend Money on a
Eſtate of leſs than double the Value of th
Sum lent, and always to have the Cuſtod
of the Title Deeds; to annex one Part o
the Mortgage to the laſt Title Deed, wit
an Indorſement thereon referring to th
ſame; and this ſhould be done whethe
the Deeds are left in the Mortgagee's o
Mortgagor's Hands; and for that Purpoſe
as ſeldom as poſſible, to lend Money o
Part, but always on the whole of an Eſtate
and when it can be done, to get in a
Aſſignment of ſome old prior Incumbrance
even though ſatisfied, to protect the Eſtat

you

you are buying or lending Money upon; but this it may often be troubleſome to get, and ſometimes impoſſible.

An Oath hath often lately been required from Sellers and Mortgagors (or if *Quakers* an Affirmation) that the Eſtate to be ſold or mortgaged is, to the beſt of their Knowledge, free from all Incumbrances prior to ſuch Sale or Mortgage, except the uſual Charges of Taxes, Quit Rents, *&c.* And in Truth, according to the preſent Situation of the Law, it is abſolutely neceſſary, in order to give the Purchaſer, *&c.* ſome degree of Satisfaction that he may be ſecure, that ſuch Oath or Affirmation ſhould always be taken; and a falſe Oath or Affirmation ſo taken ſhould be deemed Perjury, within the Statutes of 5 *Eliz. cap.* 9. and 2 *Geo.* 2. *cap.* 25. If therefore it was only to remove ſuch Temptation to Perjury, the Alteration of the Law, in the Manner I propoſe, would be highly uſeful. Oftimes ſuch Oath or Affirmation is not adminiſtred or inſiſted upon, leſt requiring it ſhould appear as a Diſtruſt of the Credit and Honeſty of the Perſon you are dealing with: But when you conſider, that not only your own Fortune and Welfare are at Stake, but that by ſuch Neglect, in not taking the beſt Security it was in your Power to have, you are guilty of Injuſtice

to your Family, who by all the Ties of Nature and Relation claim your watchful Care and Protection.

The above Cautions I know fall yet ſhort of the Certainty which every Purchaſer, *&c.* who pays his Money is intitled to; and the Property of ſuch Purchaſer, *&c.* ought not to be endangered, becauſe it may be diſagreeable to a Seller or Mortgagor to comply with reaſonable Terms; for though in ſome Inſtances, for the Sake of the Credit of Mortgagors, it may not be proper to make publick Mortgages made by them of their Eſtates, yet in all Caſes, as far as poſſible, they ſhould be prevented from committing Frauds; for the Security therefore of Purchaſers and Mortgagees, it is but reaſonable that a Perſon ſelling an Eſtate, ſubject to a prior Incumbrance, or making a ſecond or other ſubſequent Mortgage, without diſcovering to the Purchaſer or Mortgagee ſuch prior Incumbrance, which he muſt know of, and muſt therefore wilfully intend to defraud ſuch Purchaſer or Mortgagee, ſhould not only forfeit his Equity of Redemption, but be likewiſe ſeverely puniſhed, if he did not in a limited Time pay to ſuch ſubſequent Purchaſer or Mortgagee the Money by them advanced, or otherwiſe ſatisfy them; and this Puniſhment I the rather recommend,

mend, as I do not propoſe, on Account of the Secrecy generally deſired in ſuch Tranſactions, that Mortgages, or ſuch like Incumbrances, ſhould be regiſtred. By the Statute of 13 *Eliz. cap.* 5. 27 *Eliz. cap.* 4. againſt Conveyances made with an Intent to defraud Creditors and Purchaſers, Perſons making, and thoſe who are privy thereto, and avowing the ſame to be true, as above mentioned, are puniſhable by Impriſonment and Forfeiture: And why ſhould not a Mortgagor, or Seller of any Eſtate, defrauding a Purchaſer or Mortgagee, by making a ſubſequent Incumbrance, without diſcovering a prior one, if any there be, to ſuch Purchaſer, *&c.* which is a Fraud of the ſame miſchievous Kind, be puniſhed in the ſame Manner? And it would be a great Advantage to fair Purchaſers, Mortgagees, *&c.* if a Fine levied to a Purchaſer after an Incumbrance made on any Eſtate, or to a ſecond or other ſubſequent Mortgagee, ſhould after five Years were elapſed be a Bar to a prior Mortgagee, *&c.* unleſs ſuch prior Mortgagee, *&c.* ſhould before enter, or bring an Ejectment, and proſecute the ſame effectually. And I have in my Scheme of an Act hereto added recommended a Clauſe to this Purpoſe, becauſe for ſuch Term of five Years it might, in ſome Inſtances, be

poſſible

poſſible for Purchaſers, &c. to have ſome collateral Security, though ſuch may not be obtained for a longer or an uncertain Term, perhaps not always for ſuch Term of five Years; and why ſhould not a prior Mortgagee, &c. be barred by Non-claim, after a Fine with Proclamations has been levied five Years, which is a publick Tranſaction, and may be known by every one, as well as other Perſons, who by the Statute of Fines above mentioned are to be barred; for as ſuch Fine is ſo publickly levied, it muſt be his own Neglect if he does not claim and purſue his Action in due Time. By this Method a ſubſequent Purchaſer, &c. may in ſome Degree be ſafer than they now are, and not the leaſt Injury be done to a firſt Mortgagee, without his own Negligence, except in the Caſe of Infancy, Coverture, and ſuch other Impediments as are before mentioned in the Statute of Fines; and in ſuch Caſes there ſhould be the ſame Clauſe in their Favour as in that Statute.

Copyhold Eſtates, though called a Baſe Tenure, are now ſold or mortgaged on many Accounts with greater Security than other Eſtates, though they are ſubject to ſome Objections in reſpect of Fines, Cuſtoms, Services, Heriots and Forfeitures; but theſe are generally allowed for in the

Purchaſe,

Purchaſe, every Thing concerning theſe Eſtates is ſo publickly tranſacted; Surrenders and Admittances, whether to the Uſe of a Will, for without Surrenders for that Purpoſe, except in a few Caſes hereinafter mentioned, they cannot be deviſed; or on what other Account they are ſurrendred, or how affected, may be eaſily known, and they are conveyed much cheaper and eaſier. Fee-ſimple Eſtates would be much preferable if a publick Regiſter, as hereafter propoſed, ſhould be approved of, becauſe they are not bound by ſo many particular Cuſtoms, ſome perhaps good enough, others very inconvenient, nor liable to ſo many Forfeitures, Fines, *&c.* and out of them may be more eaſily raiſed ſuch Eſtates as Occaſion may require, which in Copyhold cannot be done, but ſubject to particular Cuſtoms and Reſtrictions, and in ſome Caſes not at all; and as to Timber, Mines, and almoſt all Improvements, the Owners of ſuch Fee-ſimple Eſtates have greatly the Advantage. What I chiefly recommend Copyholds for is, that a Purchaſer, *&c.* dealing about them, may be at preſent more ſecure of his Title than in any other Eſtates, from the publick Manner in which they muſt generally be conveyed; which was my chief Purpoſe to ſhew here, as it is not my Deſign to enter nicely into all the ſeveral Qualities

Qualities of Copyhold Eſtates compared with others, which would take a Treatiſe of itſelf. In ſome, but few Caſes an Intereſt in Copyholds will paſs without a Surrender: The Court of Equity in Caſe of a Will ſupplies the Defect of a Surrender for the Benefit of Children, if not to diſinherit the eldeſt Son, and for the Benefit of Creditors, where a Copyhold Eſtate is charged by the Will with the Payment of Debts, tho' there be no Surrender to theſe Uſes: But Equity will not ſupply ſuch Defect in favour of a Grandchild or Baſtard, or a Wife againſt the Heir, nor in behalf of Legatees; or if a Surrender ſhould be refuſed, a Will is good without it; ſo a *Ceſtuy que Truſt* may deviſe an Intereſt in Land, *&c.* without Surrender; and if Copyhold Lands are in Mortgage, the Mortgagor can diſpoſe of the Equity of Redemption by Will without Surrender made, becauſe he hath at that time no Eſtate in the Land whereof to make a Surrender; and Surrenders of Copyhold Eſtates may be, and often are, made out of Court to Cuſtomary Tenants to be preſented at the next Court for ſuch Purpoſes, whether for Sales, Mortgages, *&c.* as the Circumſtances of the Owners thereof may require; ſo that you ſee in ſeveral Inſtances, even Eſtates of this kind may be privately diſpoſed

Caſes in Equity ab. 122, 124. Precedents in Chan. 320, 322. 4 Rep. 25. 1 Sal. 187.

poſed of, and a Purchaſer or Mortgagee may be injured from the Concealment, &c. of ſuch Surrenders and Wills; but he is not ſtill ſo liable to be injured as in buying or lending Money on other Eſtates; for it muſt ſoon be known to him, whether he has bought or lent upon a good Title or no. In other Eſtates it may be ſeveral Years before he can know of the Impoſition; and the ſooner he knows that his Title is bad, the greater Probability he has of Redreſs. But ſuch publick Regiſter, as hereafter propoſed, would prevent all theſe Riſques. Mortgages, and other Incumbrances of a like Nature, I do not propoſe by the following Scheme to have regiſtred, as Privacy in ſuch Tranſactions is generally moſt Eligible; and having mentioned that in all Caſes it would be of Service to regiſter Deeds, &c. in the Manner hereafter propoſed, not only as it might diſcover the real Intereſt of any Perſon to the Eſtate in Lands he ſhould be about to diſpoſe of, but that it might likewiſe in Caſe of Loſs of Writings by Fire, or other inevitable Accident, be of Uſe by way of Evidence to re-eſtabliſh the Title; I would therefore adviſe in the Caſe of Mortgages, to prevent the Injuries ariſing from ſuch Loſs, that Counterparts of Mortgages, &c. ſhould be always executed; and that the

Mortgagee ſhould always keep an atteſted Copy of his Mortgage Deed in a diſtinct Place from the Mortgage Deed itſelf; ſo that if either the original Mortgage, or ſuch atteſted Copy ſhould happen to be loſt or deſtroyed, the other, which would in all likelihood be preſerved, would be a kind of Evidence in favour of a Mortgagee; and 'tis very improbable that they ſhould both be at the ſame time loſt or deſtroyed; but if it ſhould ſo happen, the Counterpart would be of Service, which with ſome other circumſtantial Proof of ſuch Mortgage being ſubſiſting (and that is generally to be had from ſome Perſon or other who is made Privy thereto) might be a ſufficient Teſtimony in behalf of the Mortgagee, and annexing the Counterpart of ſuch Mortgage to the Mortgagor's laſt Title Deed, Will, *&c.* as herein propoſed, may be of Service in this Reſpect. If it ſhould not be approv'd of to regiſter Deeds, *&c.* in the Manner herein recommended, it would be proper for all Perſons, as well Mortgagors and Mortgagees as others, who have any Eſtates in Lands, *&c.* to keep true Copies or Abſtracts of their Title Deeds and Receipts, *&c.* relative thereto, in ſome Place diſtinct from the Originals: And even if a Regiſter ſhould be appointed, it would be proper to keep atteſted Copies or true

Abſtracts of ſuch of their Title Deeds as ſhall not be regiſtered; for I do not propoſe that any other Deeds, &c. ſhall be regiſtred than what are for the future to be made or executed, as it might probably create great Confuſion in Titles to Land Eſtates, if Perſons were to be at Liberty to regiſter their old Deeds, &c. And it may be neceſſary, in order to be at as great a Certainty as Poſſible, againſt Accidents that may happen to Writings of Mortgagors after they have diſcharged their Mortgages, that Reconveyances which ſhould always be taken, ſhould be regiſtered as other Deeds, &c. are propoſed to be, if the Mortgagor ſhould think proper: However if Regiſtring ſuch Reconveyance ſhould be objected to, I cannot adviſe a better Method for a Mortgagor to take for his Safety, than that he would depoſite in the Hands of ſome Friend an atteſted Copy of ſuch Reconveyance; which in moſt Caſes, with Proof of Witneſſes who were preſent at, or made acquainted with, ſuch Reconveyance and Diſcharge of the Mortgage, would prevent any Injury to a Mortgagor, if he ſhould by ſuch Accident ſo loſe his Writings.

'Tis the general Practice, when a Purchaſe is completed, for the Vendor, unleſs he enters into Warranty (for then he is to keep the Title Deeds to defend the

Title) to deliver to the Vendee all the Title Deeds of the Eſtate ſold; and the Vendor generally Covenants, that he is ſeiſed in Fee of the Eſtate conveyed, free from Incumbrances, except ſuch as are particularized in the Deed; and that the Purchaſer ſhall hold the ſame diſcharged of all former Incumbrances, and quietly enjoy the ſame, and for further Aſſurance; therefore on ſuch Sale and Conveyance, and Delivery of the Title Deed, tis extremely proper, tho' what is ſeldom done, for the Seller to have a written Account of what Deeds he delivers over, atteſted and ſigned by the Purchaſer: And if a Publick Regiſter, as hereafter recommended, was inſtituted, it would be proper to regiſter ſuch Particular; for as there is no Regiſter to diſcover what Title Deeds relating to Eſtates are in Being, or even if there was ſuch Regiſter, unleſs ſuch Account itſelf be regiſtered, if it ſhould happen to be loſt, how eaſy is it for a Purchaſer to ſuppreſs ſome Deed very Material, perhaps the only Support of the Title; and that ſuch Deed was ever delivered, without ſuch Particular as above, in many Inſtances, it may be impoſſible for a Vendor or his Repreſentative to give ſufficient Evidence of; and the Purchaſer may by ſuch colluſive Means weaken the Title, and let in another

other Perſon to recover the Eſtate, which it may not be in the Power of the Vendor to prevent, for want of ſuch Deeds ſo ſuppreſſed, as he may never be able to prove that they ſubſiſted and were delivered; and after ſuch fraudulent Suppreſſion, and ſuffering a Perſon not intitled to the Eſtate ſo colluſively to recover it, the Seller, or his Repreſentatives, if they are of Ability, may be ſued for Breach of Covenant. In Caſe of Mortgages, this according to the common Practice ſeldom can happen; for when Mortgagees take the Title Deeds, they always give a Receipt, particularizing them to be accountable for them; and in ſuch Receipt ſhould be taken Notice of every Thing executed or delivered to the Mortgagee, that at the Diſcharge of ſuch Mortgage, or Reconveyance of the mortgaged Eſtate, it may appear whether or no they are all delivered back; and Mortgagors ſhould keep atteſted Copies of ſuch Receipts in a diſtinct Place from the Originals, for fear of loſing ſuch Originals.

It is likewiſe proper in all Purchaſes and Mortgages to require the old Deeds concerning the Eſtate ſold or mortgaged for a conſiderable Time back, unleſs a new and good Title thereto be indiſputably raiſed under the modern Deeds, Fines and Non-claim, Length of Poſſeſſion, as required by the

the Statute of Limitation, or otherwiſe for it is poſſible by a colluſive Suppreſſion Concealment or Loſs of an old Conveyance of ſuch Eſtate, in many Caſes intirely to take away the Seller's or Mortgagor's Title; and it may often happen that Eſtate got by Diſſeiſin, or wrongful Poſſeſſion and held without Title, may be impoſed upon a Purchaſer or Mortgagee; and Purchaſers, *&c.* may be greatly injured by purchaſing or lending Money on ſuch bad Titles: For want of ſuch antient Deeds, or other unqueſtionable Title under thoſe which are to be delivered, it is highly requiſite at the Time of the Purchaſe, *&c.* to have a Fine with Proclamations levied, and a collateral Security for five Years; and when a Perſon is ſeiſed of an Eſtate, concerning which he has not any very antient Deeds, nor a modern clear Title thereto under any Fine, or otherwiſe, it is adviſable for him to levy a Fine with Proclamations, in order to eſtabliſh his Title. The above Inconveniences would ſeldom or never happen if all Titles were regiſtred; neither would Forgeries ſo frequently, nor Concealments, nor Suppreſſions of Deeds, Wills, *&c.* to the Prejudice not only of fair Purchaſers and Mortgagees, but alſo of Perſons intitled to Eſtates in Remainder, or otherwiſe; as Grantees, *Ceſtuy que Truſt,*

Ceſtuy

Ceſtuy que Uſe, by Deviſe, *&c.* who are often injured thereby.

It is not my Intention to treat of the Nature of all the various Tenures of Eſtates, or to give an Account of the many Reſolutions, Determinations and Laws relating thereto, as are to be collected from the Books and Reports of our Lawyers, Statutes and Records, or the different Forms of Deeds uſed in the Acquiſition or Diſpoſition of ſuch Eſtates, but to ſhew that Purchaſers, Mortgagees, and others intitled under Deeds, Wills, *&c.* to Eſtates, as our Laws now ſtand, may be often injured through Concealments, Suppreſſions, and Forgery of ſuch Deeds, *&c.* and the Neceſſity of an Amendment in ſuch our Laws in this Reſpect, and to ſupply, if I could, in ſome Meaſure, this Deficiency in them, which I have endeavoured at, by the Obſervations I have made, and my Scheme of an Act hereto added, and to give ſome few Rules for the better Security of Purchaſers, Mortgagees and others; and I hope ſuch Rules will be of ſome little Advantage to the above mentioned Perſons, for whom they were chiefly intended. I am ſenſible that Perſons guilty of Suppreſſions and Forgeries, as well as Concealments of Deeds, *&c.* are puniſhable, but their Puniſhment can be no Satisfaction to Perſons

who

who are to loſe their Eſtates or Money by ſuch Suppreſſion, &c. neither are ſuch Puniſhments ſufficient to guard againſt the Injuries, which I have ſhewn ſuch Perſons to be liable to thereby, for ſuch Concealments may not be in all Caſes wilful; and Suppreſſions and Forgeries may now be ſo ſecret, that in ſome Inſtances it may be impoſſible to diſcover them; or perhaps ſuch Suppreſſions or Forgeries may not be known till it may be too late for the Perſons injured to have any Relief, perhaps not till after the Death of the Perſons guilty thereof, and often not at all. But all theſe Miſchiefs would be intirely prevented, if all Deeds, except Mortgages, &c. were to be regiſtred in the Manner hereafter recommended, and Mortgagors were to be puniſhed for Frauds, as herein mentioned. And I humbly ſubmit what I have here propoſed on this Subject, which certainly deſerves the moſt mature Conſideration, to the Legiſlature.

At firſt, in a Scheme of this extenſive Nature, it is not likely that every proper Regulation could be thought of and adjuſted, but ſome muſt eſcape Notice; other proper and neceſſary Clauſes will undoubtedly occur to others, and what ſhall be ſtill wanting may, as ſuch Defect ſhall be diſcovered from Time to Time, be eaſily ſupplied. It

will give me great Pleaſure if my Endeavour ſhall in any Degree anſwer the deſired End; from the Frequency of Misfortunes of this Kind, I have been induced to offer my Thoughts on this Occaſion, and thus having ſo far finiſhed what I deſigned, I ſhall now add a ſhort Sketch of ſuch Act, which I have in my above Obſervations referred to, and recommended, with a few further occaſional Remarks interſperſed.

It may be intitled, An Act for the better aſſuring Eſtates in Lands and Hereditaments, and all Profits thereout, to fair Purchaſers, Mortgagees and others, Grantees and Deviſees of ſuch Eſtates, by regiſtring Deeds, &c. concerning them; and may recite that Injuries often happen to Purchaſers, Mortgagees, Grantees and Deviſees of Eſtates in Lands and Hereditaments, through Concealments, Suppreſſions, and Forgeries of Deeds, Wills, Judgments, &c. affecting them, ſo that the ſame are often ſold and mortgaged without a proper Title thereto in the Seller or Mortgagor thereof, and ſometimes ſubject to former undiſcovered Incumbrances; and that ſeveral Perſons have been unjuſtly deprived of the Benefit of ſuch Eſtates, which they have been well intitled to, for want of a publick Regiſter for the Diſcovery of

ſuch Deeds, *&c.* and ſhould therefore en
act, That from a certain future Time (at th
Diſtance, if it ſhall be thought proper, o
one or two Years, that in the Interim ſuc
Objections as ſhall ariſe may be conſidered
and ſuch Additions and Alterations mad
as may be neceſſary) in every County i
England and *Wales* a publick Regiſte
ſhould be kept in a particular Part of ſuc
County, either in the County Town, o
ſuch other Town as ſhall be thought mo
convenient to all the Inhabitants thereof
(to be herein ſpecified) in which Regiſte
all Deeds, Wills, Judgments, Fines, Re-
coveries, Recognizances, Statutes, Patents
Aſſignments, Commiſſions of Bankruptcy,
whether iſſued or ſuperſeded, Gifts, Grants,
Records, and all Articles, Agreements and
Contracts concerning any Eſtate in Lands,
Advowſons or Hereditaments whatſoever,
by which the ſame ſhall be bound, affected
or charged, or by which they ſhall be con-
veyed, except Leaſes at a Rack Rent, for
any Term not exceeding three Years, and
Mortgages, unleſs the Parties ſhould think
proper to regiſter them, (either abſolutely,
or To Uſes) ſhould be regiſtred in a ſhort
Form, (or more fully at the Option of the
Parties) mentioning only the Date, Names
of the Parties, and Lands conveyed and
comprized therein, with the Nature of the

Deed,

Deed, &c. in order to give Perſons concerned thereabout Notice that ſuch Deeds, &c. have been executed and made; which Regiſter ſhould be open at proper Times to be inſpected. Fines, Recoveries, Judgments, Recognizances, Statutes, Decrees, particular Grants from the Crown, Commiſſions of Bankruptcy and Conveyances on Record are now entered and inrolled, and may be ſearched for and ſeen at their proper Offices, as likewiſe are Bargains and Sales in the Counties where the Lands ſold lie, or in certain of the King's Courts of Record at *Weſtminſter*; yet if ſuch Fines, &c. as well as Bargains and Sales, were to be regiſtred at ſuch publick Regiſter-Office herein propoſed to be kept in the proper County wherein the Lands comprized therein are ſituated, it would ſave Purchaſers, &c. a great deal of Trouble and Expence. But as ſuch Fines, &c. and Bargains and Sales, are now to be diſcovered and known at ſuch proper Offices, I do not propoſe that they ſhall be invalidated, if not regiſtred, as I do Deeds, Wills, &c. which cannot now be any where diſcovered. I only recommend this Direction as to Fines, &c. for the Eaſe of Purchaſers, Mortgagees, &c. that the Perſon taking the Benefit of ſuch Fines, &c. ſhould be obliged to regiſter them within

ſome limited time after they become of Force; and Perſons ſhould be at Liberty to regiſter Receipts for Deeds, Writings, *&c.* concerning ſuch Eſtates; and in ſuch Regiſter a Memorial of all ſuch Deeds, Wills, *&c.* ſhould be regiſtred, or ſuch Deeds, *&c.* ſhould be of no Force againſt a ſubſequent fair Purchaſer or Mortgagee for valuable Conſideration, if a Memorial of the Deed, *&c.* under which ſuch ſubſequent Purchaſer or Mortgagee ſhould claim, ſhould be firſt regiſtred; and every Will or Deviſe of ſuch Eſtate, contained in any Memorial ſo regiſtred, ſhall be void as to fair and *bona fide* Purchaſers and Mortgagees, unleſs a Memorial of ſuch Will be regiſtred, before a Memorial of the Deed, *&c.* under which ſuch fair Purchaſer or Mortgagee ſhall claim; and all Perſons wilfully preventing, neglecting or hindering the Regiſtring of ſuch Deeds, *&c.* with Intent to defraud Perſons intitled to any Eſtate thereunder, ſhould be liable to make Satisfaction to Perſons injured for want of ſuch Deeds, *&c.* being regiſtred.

If a Seller or Mortgagor of an Eſtate, to all Appearance having a good Title to the Eſtate by him conveyed, and which he would in reality have had, if ſome Deed or Will, *&c.* neglected to be regiſtred had not been made and executed; and likewiſe

the

the Perſons wilfully preventing, neglecting or hindering, the Regiſtring of ſuch Deeds, &c. with Intent to defraud the Perſons intitled to any Eſtate thereunder, ſhould be all unable to ſatisfy the Perſons injured for want of ſuch Regiſtry, it is much more reaſonable, that thoſe who would have been intitled to the Benefit of ſuch Deed, &c. if they had been regiſtred, ſhould loſe their reſpective Intereſts, rather than fair Purchaſers and Mortgagees; and the rather for that ſuch Deeds, &c. which are moſt likely not to be regiſtred in due time, are voluntary and free Gifts (for Settlements, Purchaſes and Mortgages, on valuable Conſideration, will generally be regiſtred at the Time of their Execution, or very ſoon after; and it would be very careleſs Management if they were not ſo regiſtered) and alſo the rather for that the Perſons intitled to the Benefit of ſuch Deed, &c. are often ſeveral in Number, and ſo the better able to bear the Burthen; or if only one Perſon ſhould be intitled to the Benefit of ſuch Deed, &c. the Loſs would be ſtill eaſier to him or them, no Conſideration having been given for the ſame, than to a Purchaſer or Mortgagee on valuable Conſideration: And if a Perſon ſhould Sell or Mortgage an Eſtate, which he had no manner of Title

to,

to, the Perſons to whom any Benefit or Intereſt is given by any Deed, Will, &c. tho' ſuch ſhould not be regiſtred in due time, would not be prevented from recovering it; and the Purchaſer or Mortgagee having ſo paid their Money on or for an Eſtate, to which the Seller or Mortgagor had no Title, muſt look after the Seller or Mortgagor for their Money; for in this Caſe it would be unreaſonable, that Perſons intitled under ſuch Deeds, &c. tho' not regiſtred, ſhould be ſufferers.

If a Publick Regiſter ſhould be appointed, and Titles regiſtred accordingly, it would in all Caſes be impoſſible for Perſons to ſell or mortgage any Eſtate in Lands, unleſs they were intitled as Heirs at Law to the laſt Owners, or otherwiſe intitled by ſome Deed or Will, &c. executed by ſuch Owner, and regiſtred; for who ſuch laſt Owner was, or the laſt Anceſtor of ſuch Heir intitled, would be known by ſuch Regiſter. Titles gained by Diſſeiſins or wrongful Poſſeſſion would often be prevented by a Regiſter, as it would make Titles to Eſtates better known: Neither would Purchaſers, &c. be impoſed upon by buying ſuch Eſtates; for by ſuch Regiſter, with the antient Deeds, and other Proof of long Poſſeſſion, or by ſubſequent Fines creating

after

after Non-claim a new Title, it may be eaſily known whether ſuch Title was originally wrongfully acquired, and when it is cleared.

There is another Species of Eſtates which I have ſcarce yet mentioned, tho' ſuch ſhould likewiſe be regiſtred; and theſe are Eſtates got by Eſcheats, and the ſeveral kinds of Forfeitures; ſuch Forfeiture ſhould within a limited Time be regiſtred, or be of no Force as againſt real Purchaſers or Mortgagees on valuable Conſideration having no Notice of ſuch Forfeiture; and Perſons wilfully concealing it, and ſelling Eſtates ſubject thereto, to defraud Purchaſers, *&c.* ſhould be puniſhed for ſuch Fraud, and liable to make Satisfaction to the Perſon injured, whether he be the Purchaſer or Mortgagee, or the Perſon to whom ſuch Eſtate was forfeited; and Recognizances, Statutes, *&c.* for the Performance or Payment of any thing at a future Day, and which bind the Eſtates of Cognizors, *&c.* ſhould in three Months after Forfeiture of ſuch Condition be regiſtred, or be of no Force againſt ſubſequent Purchaſers, *&c.* on good Conſideration; and Perſons concealing ſuch forfeited Recognizances from Purchaſers and Mortgagees of Eſtates liable thereto, or indeed any other Recognizances,

nizances, &c. not forfeited, ſhould be puniſhable for Fraud, and make Satisfaction to the Party injured, whether he be the Purchaſer or Mortgagee, or the Perſon who was intitled by ſuch Forfeiture to the Eſtate ſo Sold, &c. In the Caſes of Infants, and Femes Covert, Perſons in Priſon, out of the Land, or of unſound Mind, they or the Perſons intitled under them to the forfeited Eſtate, ſhould be at Liberty to Regiſter the ſame, ſo as to take Advantage thereof, at any Time within three Years after the Impediments they were under ſhall be removed.

Where Deeds, Wills, &c. are made, taking Notice only in a general Manner of the Lands therein compriſed, under the Denomination of all the Lands or Eſtates of the Perſon granting or deviſing them, or in any other general Manner, without Particulariſing in what Counties, Diviſions, or Pariſhes ſuch Lands lie, as in ſuch Caſe it may be difficult to diſcover, or perhaps may not ſoon be known in what Counties the Eſtates in Lands or Hereditaments of ſuch Perſons are ſituated; I would therefore propoſe, that the Perſons appointed to keep the Regiſter for the County of *Middleſex*, ſhould keep a diſtinct Book, in which ſuch Deeds, Grants, Wills, &c.

Granting

Granting or Deviſing ſuch Eſtate, in ſo general a Manner, ſhould be regiſtred; and ſuch Wills ſhould for the greater Eaſe of Purchaſers, &c. be regiſtred in the ſeveral and reſpective Counties in which the Eſtates therein compriſed under ſuch general Words ſhall lie, as they ſhall be from time to time diſcovered; tho' indeed for this, if they are regiſtred in *Middleſex*, there is no great Neceſſity.

As on Account of Secrecy, Mortgages are not by this Scheme to be regiſtred, I would propoſe, that if any Perſon ſhould Sell or Mortgage ſuch Eſtate, as is abovementioned, when it is ſubject and liable to any prior Incumbrance, without diſcovering the ſame to ſuch ſubſequent Purchaſer or Mortgagee, he ſhould not only forfeit his Equity of Redemption, but be puniſhed by Fine and long Impriſonment at leaſt, if convicted on Indictment or Information, unleſs ſuch Seller or Mortgagor ſhould within one Month after Demand made in Writing pay off the Principal and Intereſt Money to ſuch Purchaſer or Mortgagee, or their Repreſentatives intitled thereto, or otherwiſe ſatisfy them; and I think in Juſtice a ſeverer Puniſhment is due to ſuch Fraud; for it is equal to privately Robbing ſuch Purchaſer or Mortgagee of

ſo much Money; and in Strictneſs the Puniſhment ſhould be the ſame in one Caſe as in the other: And Sellers and Mortgagors wilfully and knowingly Concealing from a Purchaſer, *&c.* any Deeds, *&c.* affecting his Title, ſhould be puniſhed for ſuch Fraud by ſome Fine, even where a Purchaſer or Mortgagee ſhall be ſatisfied, if by ſuch Fraud they were in danger of loſing the Conſideration Money advanced by them, (*viz.*) if the Eſtate conveyed or ſecured to them was not at the time it was ſo conveyed and ſecured, ſufficient in Value to pay off the prior Incumbrances thereon, as well as the Money advanced by ſuch ſubſequent Purchaſer or Mortgagee; for in ſuch Caſe tho' a Purchaſer or Mortgagee ſhould be ſatisfied, I think, in order to prevent all Frauds of this kind, ſuch Seller or Mortgagor not diſcovering a prior Incumbrance which he knew of, even if he made Satisfaction, ſhould be puniſhed, tho' not ſo ſeverely as if ſuch Satisfaction ſhould not be made; and Perſons concealing and ſuppreſſing Deeds, *&c.* to the Injury of Purchaſers, Mortgagees or others, wilfully and knowingly, ſhould be puniſhed in ſome Manner, if not equally with Perſons forging ſuch Deeds, *&c.* for the Crime is in many

Caſes

Caſes of the ſame ill Conſequence; and Puniſhments for theſe Frauds would be proper to be enforced by Law, if a Regiſter ſhould not be thought neceſſary. And prior Mortgagees not entring, claiming, or bringing Ejectments to recover Poſſeſſion of the Lands mortgaged to them, within five Years after a Fine with Proclamations levied to a ſubſequent Purchaſer or Mortgagee, ſhould be barred thereby, except Infants, Women Covert, Perſons in Priſon, out of the Kingdom, or of unſound Mind; and theſe ſhould have five Years after their Impediments removed to purſue their Claims, as in the Caſes of Non-claim under the Statute of Fines above mentioned; and ſuch Entries, Claims or Ejectments, or Notice thereof, ſhould be regiſtred in the County in which the Lands claimed ſhall lie. The Reaſon why I propoſe that Fines only ſhould bar prior Mortgagees, and not Mortgages made by any private Deed or Conveyance, is on Account of the publick Manner in which ſuch Fines with Proclamations are levied, ſo that a prior Mortgagee not knowing thereof, or neglecting to make his Claim or Entry, or to bring his Action, is very much to be blamed, and certainly ought rather to ſuffer than a ſubſequent fair Purchaſer,

chaſer, &c. without Notice of ſuch Mortgage; and by this Method ſubſequent Purchaſers, &c. would be in ſome Degree ſafe, and not the leaſt Injury be done to a prior Mortgagee without his own Negligence; and Mortgagors or Vendors wilfully concealing from a Purchaſer or Mortgagee Actions brought againſt them for the recovering of Eſtates they are about to ſell or mortgage, ſhould be puniſhed for ſuch Fraud; and ſuch Actions, as well as thoſe commenced againſt the Heirs and Deviſees under the Statute of 3 *W. & M. cap.* 14. ſhould be regiſtred in every County, in which the Perſon bringing ſuch Action ſhall know at the Time of ſuch Action brought, that ſuch Heir, &c. has any Eſtate to be liable to it, or in ſome one general Office for ſuch Purpoſe; as for Inſtance, with the Perſons appointed to keep the Regiſter of the County of *Middleſex*, or ſuch other Perſon as ſhould be approved of.

Mortgagees in all poſſible Caſes ſhould be obliged to keep in their Cuſtody the Title Deeds of the Eſtate ſecured to them, and a Breach of the Oath or Affirmation of late uſually taken by Sellers and Mortgagors of the Eſtates in Lands and Hereditaments, that the ſame are free from Incumbrances,

cumbrances, except thoſe particularly mentioned in ſuch Oath or Affirmation, ſhould be puniſhable as Perjury now is by Law. Perhaps if Mortgagors were obliged to have one Part of their Mortgages executed annexed to the laſt Deed or Will under which they claim their Title, with an Indorſement on the Back of ſuch Deed, *&c.* referring to ſuch Mortgage, eſpecially in all Caſes where the Title Deeds do not go with the Mortgage, and even where they do, it would be a good Rule, that one Part of the Mortgage ſhould be ſo annexed; and Diſannexing ſuch Deeds, or Eraſing or Altering ſuch Indorſement, or Forging ſuch Indorſement with Intent to defraud, ſhould be ſeverely puniſhable.

Bankrupts ſhould likewiſe be liable to the ſame Puniſhment of Fine and Impriſonment, if convicted in the ſame Manner as above, in Relation to Sellers and Mortgagors of Eſtates in Lands, *&c.* of ſelling or mortgaging ſuch Eſtates, after having wilfully and knowingly committed an Act of Bankruptcy, without diſcovering the ſame to the Purchaſer or Mortgagee; and Sales or Mortgages made to fair Purchaſers or Mortgagees on valuable Conſiderations, without any Notice of ſuch Sellers or Mortgagors having committed any Act of Bank-

Bankruptcy, or being in inſolvent Circumſtances, ſhould not be impeached; and in order to make ſuch Purchaſes, &c. valid, Purchaſers and Mortgagees ſhould advance their Conſideration Money in the Preſence of two Witneſſes, who ſhould atteſt the Receipt thereof; and ſuch Purchaſer, &c. if living, and thereto lawfully required, ſhould ſwear, or if a Quaker make his ſolemn Affirmation, that he had not any Notice of any Act of Bankruptcy committed by the Perſon who had ſold or mortgaged ſuch Eſtate to him, or of his being in inſolvent Circumſtances: And if ſuch Purchaſer, &c. be dead, then it muſt lie on the Creditors to prove ſuch Notice was had; and in all Caſes, as well as that of Bankruptcy, ſubſequent Purchaſers, &c. ſhould be obliged to pay their Money in the Preſence of two Witneſſes, who ſhould atteſt the Receipt thereof; and nothing but Regiſtring a Memorial of a former Incumbrance, Deed, &c. ſhould be equal to a Notice thereof; and Witneſſes atteſting Receipts of Money falſly ſhould be puniſhable.

Perſons offering falſe Deeds, Wills, &c. to be regiſtred, and Regiſters making falſe Entries, or forging any Regiſter, &c. ſhould be ſeverely puniſhed. The Regiſter,

giſter, and his Deputy or Deputies, ſhould be ſworn to Secrecy, and the faithful Execution of their Office, as well as find Security for ſuch their Secrecy and faithful Behaviour, and be puniſhable for Perjury, as the Statutes now in Being againſt Perjury direct; and the Breach of an Oath or Affirmation in all other Caſes, which ſhall be lawfully required and adminiſtred, for the Execution of this propoſed Act, either as to Witneſſing, Regiſtring Memorials, (which ſhould be done in the ſame Manner as in the Counties of *York* and *Middleſex*) or for any other Purpoſe, in which an Oath or Affirmation ſhould be thought proper to be directed, ſhould be puniſhable in the ſame Manner. And all Forgeries againſt the Intent of this Act ſhould be puniſhable. And the Regiſter ſhould be paid for entring Memorials as in the Counties of *York* and *Middleſex*: And ſuch Regiſter for each County ſhould keep a proper Book, diſtinguiſhing each Pariſh, Townſhip and Place therein, in which he ſhould diſtinctly and alphabetically enter the Names of the Parties to all Deeds, Judgments, *&c.* concerning the Eſtates above mentioned, and regiſter all ſuch Deeds, *&c.* (except ſuch Leaſes and Mortgages as aforeſaid, if the Regiſtring of

ſuch

ſuch ſhould not be approved of): And the Books kept by ſuch Regiſter ſhould be delivered yearly to the *Cuſtos Rotulorum*, or to ſome other proper Perſon or Perſons, or into ſome proper Place where they may be preſerved, and from Time to Time inſpected. And the Regiſter of ſuch general publick Regiſter-Office in each County ſhould be appointed by the King, Lord Chancellor, or elected by the ſubſtantial Freeholders of the County, as in *Yorkſhire*, or in ſuch other Manner as ſhould be beſt approved of. And ſuch Regiſter, his Deputy or Deputies, ſhould take the Oaths of Allegiance and Supremacy, and receive the Sacrament according to the Church of *England* within three Months after his Election: And for the better Regulation of ſuch Office as to the Forfeiture of the Regiſter, or his Deputy or Deputies, on Miſbehaviour, the Method of taking Security, what is to be done on ſuch Regiſter's Death, the Method of regiſtring Memorials, with the Penalties inflicted in order to make ſuch Regiſter and Deputies better anſwer the End intended, proper Clauſes may be taken from the ſeveral Statutes of 2 *Ann. cap.* 4. 5 *Ann. cap.* 18. 6 *Ann. cap.* 35. 7 *Ann. cap.* 20. and 8 *Geo.* 2. *cap.* 6. appointing, and from Time

to

to Time regulating the Regiſters in the Counties of *York* and *Middleſex*. And moſt of the different Sections in theſe Statutes, as they are already drawn, and from Experience perfected, would be of Service, and agreeable to the Scheme I have recommended, if put together and reduced into one Act, which may be done without the leaſt Difficulty, from the Statutes themſelves, or Mr. *Cay's Abridgment* thereof, under Title *Regiſter*, where they may be ſeen in a much ſhorter View. But for a more exact Plan of ſuch Act as is hereby propoſed, I would recommend the 8 *Geo.* 2. *cap.* 6. (which as it is the laſt, ſo it is the moſt compleat of the Kind) having Regard to the other Acts, and ſuch Alterations as are herein pointed out in Relation to regiſtring of Decrees, Patents, Records, Actions, Forfeitures of Eſtates and Recognizances, Copyhold and Leaſehold Intereſts, Mortgages, Wills, Fines and Bankrupts; and the other Particulars above in this Sketch of an Act mentioned; which Alterations may be enacted by a few additional Clauſes; and ſuch Statute of 8 *Geo.* 2. may eaſily be made conformable thereto. Thus I have thrown together what occurred to me on this Subject, as what I thought might be

of real Service to Purchaſers and Mortgagees of Eſtates in Lands and Hereditaments, and others, Grantees and Deviſees of ſuch Eſtates; and ſubmit it to ſuch Corrections, Additions and Alterations, as ſhall be thought proper. If the Parliament ſhould take this ſo neceſſary and important Subject into their Conſideration I do not doubt but the Inconveniences above mentioned will in a great Meaſure be remedied: And to promote ſuch Publick Service was what I have aimed at in Publiſhing my Thoughts on this Head.

FINIS.

To the READER.

The *&c.* is frequently uſed herein to prevent a Repetition of the ſame Words; when it is placed after *Buyer* or *Purchaſer*, it ſignifies *Mortgagee*; when after *Seller*, it means *Mortgager*; and when after the Words *Deeds or Wills*, it means *all other Diſpoſitions, Inſtruments or Records affecting Eſtates in Lands and Hereditaments*; in other Places where it is uſed it may eaſily be known what it includes by the Reſt of the Sentence in which it is inſerted.——For *Mortgagor* all through read *Mortgager*. Page 7. Line 6. after *accrued* put a *full Point*. P. 8. at the Bottom of the Margin dele *Wood's Inſt.* P. 24. L. 5. the Word *Purchaſers* ſhould begin a freſh Section. L. 16. for *do* read *to*. P. 28. L. 21. for *limited* read *hinted*. P. 31. L. 22. read *the Heads*. P. 35. L. 3. for *Mortgages, Aſſignments*, read *Mortgage Aſſignments*. P. 42. L. 3. after the Word *Covenants*, read *if the Eſtate ſhould have been previouſly mortgaged to the full Value*. P. 46. L. 26. for *is* read *are*. P. 47. L. 17. dele *more*. P. 49. L. 30. dele *&c.* P. 52. L. 1. after *Title* within the Parentheſis, read *on which Account as it may be dangerous for a Purchaſer or Mortgagee to be without the Title Deeds, the Covenant of Warranty may be objected to*, which did not occur to me when I recommended this Covenant in P. 39. P. 57. L. 4. inſtead *of this Kind* read *of the Kind I have mentioned*.

To the Reader.